

§ 35.10020

40 CFR Ch. I (7–1–00 Edition)

§ 35.10020 Eligible activities.

(a) Activities eligible for funding under this program are those for planning, developing, and establishing capability to implement environmental protection programs, including solid and hazardous waste programs.

(b) Alaska Native village corporations and regional corporations are not eligible to receive general assistance for capacity-building to develop regulatory programs.

§ 35.10025 Limitations.

Financial assistance provided under this program is subject to the following terms and limitations:

(a) No initial grant provided under this program for a fiscal year shall be for an amount less than \$75,000. A grant amendment may be for an amount less than \$75,000.

(b) No single grant awarded under this program may be for an amount exceeding ten percent of total annual funds appropriated under section 11(h) of the Act.

(c) Awards made pursuant to this section shall remain available until expended within the term of the award. The term of an award may exceed one year, but may not exceed four years.

(d) No award under this program shall result in reduction of total EPA grants for environmental programs to the recipient. Receipt of funds under this program shall not preclude an eligible Indian tribal government or intertribal consortium from receiving individual program or project-specific grants or cooperative agreements. Funds provided under this program may be used to supplement other funds provided by EPA through individual program or project-specific grants or cooperative agreements.

§ 35.10030 Grant management.

Procedures for accounting, auditing, evaluating, and reviewing any programs or activities funded in whole or in part for a general assistance grant under this program shall be governed by regulations at 40 CFR part 31.

§ 35.10035 Procurement under general assistance agreements.

Procurement of goods or services by recipients funded under this program

shall be governed by the following requirements:

(a) *Competition.* To the extent permitted by 25 U.S.C. 450e(b):

(1) The recipient must provide maximum open and free competition.

(2) Recipients must not unduly restrict or eliminate competition.

(b) *Documentation.* Recipients must document all procurement activities with written records that furnish reasons for decisions.

(c) *Cost.* (1) The recipient must determine that all costs are reasonable.

(2) The recipient must comply with the cost and price analysis requirements in 40 CFR 31.36(f).

(d) *Debarment.* Recipients and contractors must not make any contract at any time to anyone who is on the “List of Parties Excluded from Federal Procurement or Nonprocurement Programs.”

(e) *Recipient Responsibility.* (1) The recipient is responsible for the settlement and satisfactory completion of all contractual and administrative issues arising out of contracts entered into under a grant.

(2) The recipient must ensure that all contractors perform in accordance with the terms and conditions of the contract.

(f) *Responsible contractors.* The recipient shall award contracts only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed contract.

(g) *Disadvantaged business enterprises.* The recipient shall comply with the “Small, Minority, Women’s and Labor Surplus Area Business” requirements in 40 CFR 31.36(e).

(h) *Illegal contracts.* Recipients may not award cost-plus-percentage-of-cost or percentage-of-construction-cost contracts.

(i) *Contract provisions.* The recipient must include the following provisions in each contract:

(1) Statement of work;

(2) Schedule for performance;

(3) Due dates for deliverables;

(4) Total cost of the contract;

(5) Payment provisions; and

(6) The following clauses from 40 CFR 33.1030, “Model contract clauses”:

(i) Supersession;

- (ii) Privity of Contract;
- (iii) Termination;
- (iv) Remedies;
- (v) Audit, Access to Records;
- (vi) Covenant Against Contingent Fees;
- (vii) Gratuities;
- (viii) Responsibility of the Contractor; and
- (ix) Final Payment.

(j) *Subcontracting.* A contractor must comply with the following provisions in its award of subcontracts (these requirements do not apply to subcontractors for the supply of materials to produce equipment, materials, and subcontracts for catalog, off-the-shelf, or manufactured items):

- (1) Section 35.10035(b) Documentation;
- (2) Section 35.10035(c) Cost;
- (3) Section 35.10035(d) Debarment;
- (4) Section 35.10035(f) Responsible contractor;
- (5) Section 35.10035(g) Disadvantaged business enterprises;
- (6) Section 35.10035(h) Illegal contracts; and
- (7) Section 35.10035(i) Contract provisions.

(k) *Bid protests.* The recipient must establish a procedure for resolving protests which complies with the provisions of 40 CFR 31.36(b)(12).

(l) *Procurement.* Recipients shall not divide any procurements into smaller parts to get under any dollar limit.

(1) If the aggregate amount of the purchase is \$1000 or less, the recipient may make the purchase as long as the recipient demonstrates that the price is reasonable.

(2) If the aggregate amount of the proposed contract is over \$1000 but less than \$25,000, the recipient must obtain and document oral or written price quotations from two or more qualified sources.

(3) If the aggregate amount of the proposed contract is \$25,000 and over but less than \$50,000, the recipient must:

- (i) Solicit written bids/proposals from two or more sources who are willing and able to do the work;
- (ii) Provide to potential sources a clear and accurate description of the work to be performed;

(iii) Provide the criteria the recipient will use to evaluate bids/proposals;

(iv) Objectively evaluate all bids/proposals submitted; and

(v) Notify all unsuccessful bidders/proposers.

(4) If the aggregate amount of the proposed contract is \$50,000 or over, the recipient must follow the procurement rules in 40 CFR 31.36.

(m) *Non-competitive procurements.* The recipient shall comply with the non-competitive procurement requirements in 40 CFR 31.36(d)(4).

PART 40—RESEARCH AND DEMONSTRATION GRANTS

Sec.

- 40.100 Purpose of regulation.
- 40.105 Applicability and scope.
- 40.110 Authority.
- 40.115 Definitions.
- 40.115-1 Construction.
- 40.115-2 Intermunicipal agency.
- 40.115-3 Interstate agency.
- 40.115-4 Municipality.
- 40.115-5 Person.
- 40.115-6 State.
- 40.120 Publication of EPA research objectives.
- 40.125 Grant limitations.
- 40.125-1 Limitations on duration.
- 40.125-2 Limitations on assistance.
- 40.130 Eligibility.
- 40.135 Application.
- 40.135-1 Preapplication coordination.
- 40.135-2 Application requirements.
- 40.140 Criteria for award.
- 40.140-1 All applications.
- 40.140-2 [Reserved]
- 40.140-3 Federal Water Pollution Control Act.
- 40.145 Supplemental grant conditions.
- 40.145-1 Resource Conservation and Recovery Act.
- 40.145-2 Federal Water Pollution Control Act.
- 40.145-3 Projects involving construction.
- 40.150 Evaluation of applications.
- 40.155 Availability of information.
- 40.160 Reports.
- 40.160-1 Progress reports.
- 40.160-2 Financial status report.
- 40.160-3 Reporting of inventions.
- 40.160-4 Equipment report.
- 40.160-5 Final report.
- 40.165 Continuation grants.

AUTHORITY: Cited in §40.110.

SOURCE: 38 FR 12784, May 15, 1973, unless otherwise noted.